

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4275 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURSING GAMJI RATHWA

Versus

STATE OF GUJARAT

Appearance:

MR K ABRAHAM for Petitioner

MR.NIGAM SHUKLA, Addl. G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 23/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 25.4.1996 passed by the District Magistrate, Baroda, detaining the petitioner under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985. The detention order was executed on the same day i.e. 25.4.1996 and since then the petitioner is under detention lodged at

Porbandar Jail, Porbandar.

The present Special Civil Application appears to have been filed in June, 1996 and on 24.6.1996 rule returnable for 22.7.1996 was issued. So far neither any reply has been filed nor any affidavit of the detaining authority has been filed.

The grounds enclosed with the detention order show that the petitioner remained in Chotaudepur as that of dangerous goonda and he is maintaining a gang of goondas, the petitioner himself being its ring leader, that the petitioner is a headstrong person and has been beating innocent persons in several areas and is creating terror and was engaged with the offence like theft and other criminal activities. Reference has been made to two criminal cases registered against the petitioner at Chotaudepur Police Station under Sections 146, 148, 149, 436, 427, 395, of the I.P.C. and Section 135 of the Bombay Police Act and that the petitioner has been using weapons and the offence like murder. Looking to such a criminal record of the petitioner and referring to the statements of certain witnesses the detaining authority satisfied that the petitioner was a problem to the public order and accordingly the detention order has been passed.

The learned counsel for the petitioner has submitted that the petitioner is a responsible person holding the position of rector at Don Bosco Boys' Hostel Chhotaudepur, District Baroda and he was attending the college, staying in the above college hostel run by the Don Bosco Management. It has been stated that he was staying in the Don Bosco Boys' Hostel and he had been selected for the post of gruhpati of the Boys' Hostel by the Don Bosco Hotel Management because of his experience, conduct and discipline, his hard working nature and his behaviour as well as his intelligent application of mind and studies, academic works and sports. The petitioner is a gruhpati i.e. rector. The petitioner has to supervise the meals and has to administer the hostel as also the sports, games and academic studies. It has been further stated by the petitioner that on account of the personal rivalry with certain individuals he has been obviously implicated in the criminal cases by real culprits who themselves were responsible for the commission of the offence. The petitioner has also placed on record the certificate issued by the Management of Don Bosco High School in which it has been stated that the Board Management was fully satisfied with his work and education as also his behaviour. The certificate

issued by the Management of Chhotaudepur Catholic Church has also been placed on record along with other documents. The contention of the petitioner is that even if the allegations and the material relied upon by the detaining authority against the petitioner are taken to be true, on its face value, all that can be said against him is that he is accused in two criminal cases for certain offences under the I.P.C. and the allegations make it clear that these are the offences against individuals for which the petitioner is already facing a trial. On the basis of the allegations and materials which have been referred to by the detaining authority it cannot be said by any stretch of imagination that the petitioner's conduct has become a threat to the public order. At the most it can be said to be a case of certain offences against the individuals and all or any of the allegations contained in the grounds of detention do not constitute a case of breach of public order against him and it is clear that the detention has been passed against the petitioner for a collateral purpose of law and order which is not at all germane to the consideration for the breach of the public order. On the face of the allegations which have been relied upon by the detaining authority, it cannot be said that on account of the petitioner's conduct any threat or disturbance has been created to the even tempo of the society. The learned counsel for the petitioner has also argued that had the petitioner's antecedents not been satisfactory, had the petitioner been really engaged in the anti-social activities, had he been a man of criminal record, the Management of the Don Bosco Boys' Hostel would not have appointed the petitioner as a rector who is required to maintain the discipline and the management of the Hostel in which the students are living.

I have considered the submissions made by the learned counsel for the petitioner. I find that the factual aspect of any of the averments made by the petitioner in his petition has not been controverted either orally or on the basis of record. The petitioner is facing the trial for the offence as aforesaid and there is no question of using them during the pendency of the criminal cases or the allegations contained therein so as to justify his detention. So I am satisfied that it is a case in which the detention order has been passed for wholly extraneous reasons and for purposes which are neither authorised nor permissible under law. The impugned detention order suffers from the vice of malice in law apart from the fact that none of the allegations put together as contained in the grounds of detention do make out a case of breach of public order against the

petitioner. The activities of a person which seek to disturb the public order are sine qua non and the factual foundation so as to make out a case of breach of public order against the petitioner is clearly wanting in the facts of this case. The petitioner may face the trial of the offence but looking to the nature of the offences it cannot be said that there are any other activities of the petitioner which could entail the requirement of passing the detention order against the petitioner. For the reasons aforesaid I am satisfied that it is not at all a case of any breach of public order and the detaining authority had no justification to pass the detention order on the ground as have been mentioned in the grounds of detention in support of the detention order. Such a detention order checking the life and liberty of a citizen so as to call upon him to face detention without trial cannot be sustained in the eye of law. The impugned order on the face of it is an order passed for factors which are extraneous to genuine consideration or the necessary ingredients for the breach of public order and thus the basic requisites for detaining the petitioner under the Gujarat Prevention of Anti-Social Activities Act were not available in the facts of the case.

Accordingly this Special Civil Application is allowed and the impugned detention order dated 25.4.1996 passed by the District Magistrate, Baroda is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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